

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

<i>e</i>PLUS INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
)	
Defendant.)	

**PLAINTIFF *e*PLUS INC'S OBJECTIONS TO DEFENDANT'S COUNTER
DEPOSITION DESIGNATIONS, COUNTER-COUNTER DESIGNATIONS
AND REVISED SUMMARY OF THE DEPOSITION OF
KENNETH WHITE (APR. 21, 2010)**

Plaintiff, *e*Plus, Inc. (“*e*Plus”), through counsel, hereby submits the following specific objections to Defendant Lawson Software, Inc. (“Lawson”)’s Counter-Deposition Designations of the deposition of Kenneth White (April 21, 2010) and offers the following counter-counter designations and revised summary:

Specific Objections

Defendant's Counter Designations	<i>e</i>Plus's Objections to Defendant's Counter Designations	<i>e</i>Plus's Counter-Counter Designations
21:8-22		
22:8-24:10; 40:6-42:6; 47:22-48:15; 66:16-67:17; 115:2-11		
115:23-116:9		
177:4-23		

Defendant's Counter Designations	<i>ePlus's Objections to Defendant's Counter Designations</i>	<i>ePlus's Counter-Counter Designations</i>
188:9-189:5		
203:12-14	106 (statement by counsel)	

Revised Summary

At the time of his April 21, 2010 deposition, Kenneth White was the director of revenue operations at Lawson.

Mr. White was designated to testify as Lawson's Rule 30(b)(6) corporate representative with respect to topics 1-10 from ePlus's 4th Rule 30(b)(6) deposition notice. These topics concern Lawson's costs, revenues, and profits for Lawson's electronic sourcing and procurement systems and services and also include an explanation and interpretation of the sources and data found in Lawson's responses to Interrogatory Nos. 10 and 24; Lawson's pricing policies for its electronic sourcing and procurement systems and services; and information available at Lawson to evaluate and analyze profits on a region-by-region and product-by-product basis. (9:4-20; 11:3-13:22; 20:24-21:22)

There are instances where SKUs were once licensed by Lawson, but are no longer licensed. Nonetheless, Lawson may still generate maintenance revenues for these SKUs. (50:24-52:20; 198:13-199:18)

The 3rd Supplemental Response of Lawson to Interrogatory No. 10 references several appendices. Appendix A (L0290457) is a chart that indicates for which SKUs Lawson tracks maintenance and/or license revenues. Appendices B (L0290459) and C (L0290501) are charts listing license and maintenance revenues for Lawson fiscal year 2005 to December 21, 2009 for customers who licensed Lawson S3 purchase order, requisitions, inventory control, requisition self-service, procurement punch-out and EDI modules and/or the M3 e-Procurement module in or after May 2003. Appendix D is a chart listing service revenues by customer number for the same period of time. The information in Appendix D comes from L290393. This information is accurate.¹ (49:11-50:12; 55:11-57:4; 117:10-121:10)

In pulling the service revenue data reflected in Appendix D, Lawson made the assumption that service revenue relevant to the accused software should include the revenues on a customer-by-customer basis for the 12 month period after a customer had licensed the SKUs at issue in this litigation. Mr. White agreed that an update of information in the spreadsheets that were the source for Appendix D to reflect information for financial year 2010 would be the way to arrive at an accurate understanding of what the services revenue is. (136:12-139:20; 143:16-21)

Lawson does not evaluate profits on a product-by-product basis. But Lawson has the capability of calculating gross and operating profitability for its functional groups, including the maintenance functional group, and geographic groups, and, since the beginning of the 2010 fiscal year, for business unit groups and suite-by-suite groups. For example, because costs for Lawson business units and for suites have been tracked since the beginning of the 2010 fiscal year,

¹ Lawson contends that this statement should be removed and replaced with "Mr. White stated that it was his assumption that the date in L290393 is accurate." ePlus objects to this as mischaracterizing the testimony and maintains its original statement. Furthermore, there is no need to preface the sentence with "Mr. White stated" because this document is already a summary of the witness's testimony.

Lawson has been able to track operating profitability for business units and for the S3 group. Some of Lawson's costs include royalties to third parties. (113:3-115:12; 22:8-24:10; 40:6-42:6; 47:22-48:15; 66:16-67:17)

L290366 is a spreadsheet that reflects license and maintenance revenues from the S3 system from 2005 to 2010. This spreadsheet was the source document for Appendix B (L0290459) and Appendix C (L0290501) to the 3rd Supplemental Response of Lawson to Interrogatory No. 10. The information in L290366 is accurate, and is based on data maintained in Lawson's systems.² L314204 is a spreadsheet that is similar to L290366 and also reflects license and maintenance revenues from the S3 system from 2005 to 2010. The difference between L314204 and L290366 is that L314204 includes revenue information for an additional five customers. Mr. White said L314204 and L290366 could be updated to reflect data through quarter 3 financial year 2010. (117:10-121:10; 131:16-21)

In its 5th Supplemental Response to Interrogatory No. 10, Lawson provided additional license and maintenance revenue for December 2009-March 2010. The information contained in this supplemental interrogatory response is accurate. The source for the information in the 5th Supplemental Response to Interrogatory No. 10 is L344873 and L344874. (151:8-152:21)

Lawson maintains financial information in both a GAAP ("generally accepted accounting principles") and non-GAAP format. Lawson maintains financial information in a non-GAAP format because it more accurately reflects how Lawson's software business is truly doing. Lawson management and Lawson's board of directors analyze Lawson's financial results from a non-GAAP perspective because it provides them with a more useful understanding of the business as compared to a GAAP perspective. (168:8-170:3; 171:9-172:14; 173:21-175:10; 176:17-177:23; 179:4-19; 183:3-16; 184:8-22; 185:3-186:25; 188:9-189:5; 190:8-192:6)

² Lawson contends that this statement should be prefaced with "Mr. White believes that." ePlus objects as the document is already a summary of the witness's testimony.

Respectfully submitted,

/s/

Craig T. Merritt (VSB #20281)
Henry I. Willett, III (VSB #44655)
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
Telephone: (804) 697-4100
cmerritt@cblaw.com
hwillett@cblaw.com

Scott L. Robertson (admitted *pro hac vice*)
Jennifer A. Albert (admitted *pro hac vice*)
David M. Young (VSB#35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
SRobertson@goodwinprocter.com
JAlbert@goodwinprocter.com
DYoung@goodwinprocter.com

Michael G. Strapp (admitted *pro hac vice*)
James D. Clements (admitted *pro hac vice*)
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Telephone: (617) 570-1000
MSrapp@goodwinprocter.com
JClements@Goodwinprocter.com

Attorneys for Plaintiff, ePlus Inc.

Dated: August 11, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2010, I will electronically file the foregoing

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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

Daniel McDonald, *pro hac vice*
William D. Schultz, *pro hac vice*
Rachel C. Hughey, *pro hac vice*
Joshua P. Graham, *pro hac vice*
Andrew Lagatta, *pro hac vice*
Merchant & Gould P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 332-5300
Facsimile: (612) 332-9081
lawsonscrvicc@merchantgould.com

Robert A. Angle (VSB# 37691)
Dabney J. Carr, IV (VSB #28679)
Troutman Sanders LLP
P.O. Box 1122
Richmond, VA 23218-1122
Telephone: (804) 697-1238
Facsimile: (804) 698-5119
robert.angle@troutmansanders.com
dabney.carr@troutmansanders.com

Counsel for Defendant Lawson Software, Inc.

/s/
David M. Young (VSB #35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
dyoung@goodwinprocter.com